

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IVAN C. GOLLMAN,

Defendant-Appellant.

UNPUBLISHED

October 12, 2004

No. 247849

Wayne Circuit Court

LC No. 02-011287-01

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. A witness saw defendant shoot the victim in the face. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred by failing to instruct the jury about how it should consider the witnesses’ inconsistent statements. He also argues that the trial court failed to instruct the jury that the crimes charged required proof of a “specific intent.” Defendant’s failure to request these instructions or object to the trial court’s failure to give the instructions generally precludes appellate relief. MCL 768.29. Moreover, the lack of a limiting instruction on the use of prior inconsistent statements does not warrant reversal of defendant’s convictions unless defendant can show some circumstances that would lead the jury to believe improperly that the inconsistent statements constituted substantive evidence. *People v Mathis*, 55 Mich App 694, 697; 223 NW2d 310 (1974). Defendant has failed to make this showing. Likewise, the trial court instructed the jury on intent, and its failure to use the phrase “specific intent” does not warrant reversal of defendant’s convictions. *People v Peery*, 119 Mich App 207, 214; 326 NW2d 451 (1982).

In a related argument, defendant suggests that his trial counsel provided him with ineffective assistance by failing to request the instructions or object to the instructions actually given. We disagree. To establish ineffective assistance of counsel, a defendant must bear the heavy burden of demonstrating that counsel’s poor performance prejudiced defendant. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). The instructions given fairly presented the issues for trial and sufficiently protected defendant’s rights. Most of the inconsistent statements either benefited defendant or were actually admissible as substantive evidence

anyway. Therefore, defendant has not demonstrated that counsel's performance prejudiced him.
Id.

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell